

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

AMERICAN ALTERNATIVE INSURANCE
CORP.,

Case No.: 2:18-cv-02346-APG-NJK

Plaintiff(s),

Order

V.

[Docket No. 30]

JOHN DUCAS,

Defendant(s).

16 Pending before the Court is Defendant's motion to compel discovery from Plaintiff, which
17 was filed on an emergency basis. Docket No. 30.

18 “The filing of emergency motions is disfavored because of the numerous problems they
19 create for the opposing party and the court resolving them.” *Cardoza v. Bloomin’ Brands, Inc.*,
20 141 F. Supp. 3d 1137, 1140 (D. Nev. 2015) (citing *In re Intermagnetics America, Inc.*, 101 B.R.
21 191, 193-194 (C.D. Cal. 1989)). “Safeguards that have evolved over many decades are built into
22 the Federal Rules of Civil Procedure and the Local Rules of this court.” *Mission Power Eng’g Co.*
23 v. *Continental Cas. Co.*, 883 F. Supp. 488, 491 (C.D. Cal. 1995). A request to bypass the default
24 procedures through the filing of an emergency motion impedes the adversarial process, disrupts
25 the schedules of the Court and opposing counsel, and creates an opportunity for bad faith
26 gamesmanship. *Cardoza*, 141 F. Supp. 3d at 1140-41. As a result, the Court allows motions to
27 proceed on an emergency basis in only very limited circumstances. *See, e.g.*, Local Rule 7-4(b)
28 (“Emergency motions should be rare”).

1 In addition to various technical requirements, *see* Local Rule 7-4(a), parties seeking
2 emergency relief must satisfy several substantive requirements. When a party files a motion on
3 an emergency basis, it is within the sole discretion of the Court to determine whether any such
4 matter is, in fact, an emergency. Local Rule 7-4(c); *see also* Local Rule 26-7(d). Generally
5 speaking, an emergency motion is properly presented to the Court only when the movant has
6 shown (1) that it will be irreparably prejudiced if the Court resolves the motion pursuant to the
7 normal briefing schedule and (2) that the movant is without fault in creating the crisis that requires
8 emergency relief or, at the very least, that the crisis occurred because of excusable neglect.
9 *Cardoza*, 141 F. Supp. 3d at 1142 (citing *Mission Power*, 883 F. Supp. at 492). If there is no
10 irreparable prejudice, sufficient justification for bypassing the default briefing schedule does not
11 exist and the motion may be properly decided on a non-expedited basis. *Cardoza*, 141 F. Supp.
12 3d at 1142-43. If there is irreparable prejudice but the movant created the crisis, the Court may
13 simply deny the relief sought. *Id.* at 1143. The relevant inquiry is not whether the opposing party
14 was at fault with respect to the underlying dispute, but rather “[i]t is the creation of the crisis—the
15 necessity for bypassing regular motion procedures—that requires explanation.” *Mission Power*,
16 883 F. Supp. at 493. For example, when an attorney knows of the existence of a dispute and
17 unreasonably delays in bringing that dispute to the Court’s attention until the eleventh hour, the
18 attorney has created the emergency situation and the request for relief may be denied outright. *See*
19 *Cardoza*, 141 F. Supp. 3d at 1143 (collecting cases). Quite simply, emergency motions “are not
20 intended to save the day for parties who have failed to present requests when they should have.”
21 *Intermagnetics America*, 101 B.R. at 193; *see also* Local Rule 7-4(b) (“[The] failure to effectively
22 manage deadlines, discovery, trial, or any other aspect of litigation does not constitute an
23 emergency”).

24 The instant motion arises out of supplemental disclosures and a privilege log served on
25 June 4, 2019. *See* Docket No. 30 at 2, 12. The meet-and-confer was conducted nearly four months
26 later. *See id.* at 2. The fact that Defendant delayed bringing this motion until the eve of the
27 discovery cutoff does not justify emergency treatment whereby the motion is moved to the front
28 of the line ahead of the many other matters pending before the undersigned. *Cf. Mazzeo v.*

1 *Gibbons*, 2010 WL 3020021, at *1 (D. Nev. July 27, 2010) (Leen, J.) (explaining that “other cases,
2 motions filed, scheduled hearings and settlement conferences do not afford me the luxury of
3 dropping everything to hear a party’s perceived ‘emergency’” and instead waiting to resolve the
4 motion until it “has worked its way up the tall stack of matters on my desk”).

5 Accordingly, the Court declines to give the motion emergency consideration. Instead, the
6 motion will be briefed pursuant to the schedule previously provided, *see* Docket No. 13, and will
7 be decided in the ordinary course.¹

8 IT IS SO ORDERED.

9 Dated: September 24, 2019

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11 Nancy J. Koppe
United States Magistrate Judge

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28 ¹ The Court expresses no opinion herein as to the merits of the motion.